

APPEAL NO. 032432
FILED OCTOBER 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 20, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is zero percent as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appealed, asserting that his IR should be five percent as certified by his referral doctor. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and reached maximum medical improvement on May 28, 2002. The claimant's referral doctor certified the claimant with a five percent IR under Diagnosis Related-Estimate (DRE) Lumbosacral Category II of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The Commission-appointed designated doctor certified the claimant with a zero percent IR, under DRE Lumbosacral Category I of the AMA Guides. On September 30, 2002, the Commission sent a request for clarification to the designated doctor, in view of the referral doctor's insistence that the claimant's lumbar findings, including documented complaints of radicular pain, warranted greater than a zero percent IR. On October 8, 2002, the designated doctor responded, "[t]he documentation does not show evidence of an injury which could give rise to symptoms from 1999 to 2002. It does however demonstrate that [the claimant] has degenerative changes with osteophytes to account for his long-lived symptoms." The designated doctor declined to alter the claimant's 0% IR.

The hearing officer did not err in determining that the claimant's IR is 0%. The claimant requests adoption of his referral doctor's five percent IR certification, asserting that the designated doctor misapplied the AMA Guides in reaching a different result and that the designated doctor's certification is contrary to the great weight of the other medical evidence. We view the reports as representing a difference in medical opinion. As such, the referral doctor's report does not rise to the level of the great weight of the other medical evidence required to overcome the presumptive weight afforded to the designated doctor's opinion. Accordingly, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **a governmental entity self-insured either individually or collectively through DEEP EAST TEXAS SELF INSURANCE FUND** and the name and address of its registered agent for service of process is

TL
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge